

2.6 Cultural Resources

2.6.1 Regulatory Setting

The term “cultural resources,” as used in this document, refers to the “built environment” (e.g., structures, bridges, railroads, water conveyance systems, etc.), places of traditional or cultural importance, and archaeological sites (both prehistoric and historic), regardless of significance. Under federal and state laws, cultural resources that meet certain criteria of significance are referred to by various terms including “historic properties,” “historic sites,” “historical resources,” and “tribal cultural resources.” Laws and regulations dealing with cultural resources include:

The National Historic Preservation Act (NHPA) of 1966, as amended, sets forth national policy and procedures for historic properties, defined as districts, sites, buildings, structures, and objects included in or eligible for listing in the National Register of Historic Places (NRHP). Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and to allow the Advisory Council on Historic Preservation (ACHP) the opportunity to comment on those undertakings, following regulations issued by the ACHP (36 Code of Federal Regulations [CFR] 800). On January 1, 2014, the First Amended Section 106 Programmatic Agreement (PA) among the Federal Highway Administration (FHWA), the ACHP, the California State Historic Preservation Officer (SHPO), and the California Department of Transportation (Caltrans) went into effect for Caltrans projects, both state and local, with FHWA involvement. The PA implements the ACHP’s regulations, 36 CFR 800, streamlining the Section 106 process and delegating certain responsibilities to Caltrans. The FHWA’s responsibilities under the PA have been assigned to Caltrans as part of the Surface Transportation Project Delivery Program (23 United States Code [USC] 327).

The Archaeological Resources Protection Act (ARPA) applies when a project may involve archaeological resources located on federal or tribal land. The ARPA requires that a permit be obtained before excavation of an archaeological resource on such land can take place.

Historic properties may also be covered under Section 4(f) of the United States (U.S.) Department of Transportation Act, which regulates the “use” of land from historic properties (in Section 4(f) terminology—historic sites). See Appendix A for specific information about Section 4(f).

The California Environmental Quality Act (CEQA) requires the consideration of cultural resources that are historical resources and tribal cultural resources, as well as “unique” archaeological resources. California Public Resources Code (PRC) Section 5024.1 established the California Register of Historical Resources (CRHR) and outlined the necessary criteria for a cultural resource to be considered eligible for listing in the CRHR and, therefore, a historical resource. Historical resources are defined in PRC Section 5020.1(j). In 2014, Assembly Bill (AB) 52 added the term “tribal cultural resources” to CEQA, and AB 52 is commonly referenced instead of CEQA when discussing the process to identify tribal cultural resources (as well as identifying measures to avoid, preserve, or mitigate effects to them). Defined in PRC Section 21074(a), a tribal cultural resource is a CRHR or local register eligible site, feature, place, cultural landscape, or object, which has a cultural value to a California Native American tribe. Tribal cultural resources must also meet the definition of a historical resource. Unique archaeological resources are referenced in PRC Section 21083.2.

PRC Section 5024 requires state agencies to identify and protect state-owned historical resources that meet the NRHP listing criteria. It further requires Caltrans to inventory state-owned structures in its rights-of-way. Sections 5024(f) and 5024.5 require state agencies to provide notice to and consult with the SHPO before altering, transferring, relocating, or demolishing state-owned historical resources that are listed on or are eligible for inclusion in the NRHP or are registered or eligible for registration as California Historical Landmarks. Procedures for compliance with PRC Section 5024 are outlined in a Memorandum of Understanding (MOU)¹ between Caltrans and SHPO, effective January 1, 2015. For most federal-aid projects on the State Highway System, compliance with the Section 106 PA will satisfy the requirements of PRC Section 5024.

2.6.2 Affected Environment

This section summarizes the information from the *Historic Property Survey Report* (HPSR 2018), the *Archaeological Survey Report* (ASR 2018), the *Finding of No Adverse Effect* (2018), and the *Environmentally Sensitive Area Action Plan* (ESA Action Plan, 2018).

¹ The MOU is available on the Caltrans’ Standard Environmental Reference (SER) website: http://www.dot.ca.gov/ser/vol2/5024mou_15.pdf.

The methodology to identify cultural resources included:

- Consultation with a number of Native American Tribes (groups and individuals) in compliance with Section 106 of the NHPA and AB 52.
- Consultation with the Native American Heritage Commission (NAHC).
- Records search at the South Central Coastal Information Center (SCCIC), California State University, Fullerton, and the Eastern Information Center (EIC), University of California, Riverside, which included review of the National Register of Historic Places (National Register); the California Register of Historical Resources (California Register); the California Inventory of Historical Resources; California Historical Landmarks (CHL); California Points of Historical Interest; the State Historic Resources Commission; the California Historic Highway Bridge Inventory; and an archaeological site records search. Based on the records search, two archaeological sites (P-30-528: Prehistoric Artifact Scatter and P-30-1631: Historic Trash Scatter) and two built resources (P-30-176758: Ortega Highway (Post Mile [PM] 13.33/16.6) and P-30-1723: San Juan Hot Springs [multi-component site]) are recorded within the Area of Potential Effects (APE).
- Other sources consulted included local historian Mrs. Ilse Byrnes who completed the Hot Spring Canyon Road National Register of Historic Places Inventory Nomination Form in 1976 (which was rejected by the Keeper and returned by SHPO).

Please refer to Chapter 4, Comments and Coordination, for a more detailed description of consultation performed for the project.

On June 19 and July 3, 2017, a pedestrian survey for the project was conducted. The survey covered both the APE and a 50-foot buffer of the APE, but did not include the existing paved roadway and paved pull-outs. This 50-foot buffer area was established for two reasons: (1) to identify any resources adjacent to the Construction Footprint that may potentially extend into the APE, and (2) to provide an area to survey beyond the Construction Footprint in the event that design changes are proposed at a later date.

The APE contains steep slopes directly adjacent to the highway, and access was not always safely available during the survey. Areas of exposed ground that could be systematically surveyed were walked with linear transects separated by 7 to 10 meters. When possible, smaller areas were surveyed in more detail. Areas that were

inaccessible were visually inspected from a distance. Special attention was given to areas that exhibited exposed sediment, cut slopes, rodent burrow backdirt, or that were near previously recorded sites.

The west end of the APE is relatively even-sloped and becomes a canyon. Steep upward slopes exist on the north, while two small knolls create a steep upward slope at the edge of the APE on the south. Vegetation on slopes consists of coastal sage scrub (CSS) and grass with 10 to 60 percent ground visibility. When the knolls along the south side of the APE end, the southeast side of the highway is a steep densely vegetated slope into the San Juan Canyon drainage. The steep mountainous terrain on the northwest side of the APE is broken only by Cold Spring Canyon, which is densely vegetated with tall sycamore, willow, and other riparian vegetation. The Cold Spring Canyon drainage contained quantities of water at the time of the survey. The downward southeastern slope from the highway into the San Juan Canyon drainage from the Cold Spring Canyon area northwest to the area adjacent to the San Juan Fire Station was heavily vegetated and not surveyed except from the narrow highway shoulder. Along the northwest side of the highway from Cold Spring Canyon to the San Juan Fire Station is the recorded location of the San Juan Hot Springs (P-30-1723).

Most of the area along the current State Route 74 (SR-74) APE has undergone massive movement of subsurface sediments from highway construction. Very few portions of the APE are situated atop natural ground surfaces. Much of the SR-74 roadside in the APE contains broken plastic, rubber, and metal fragments that are the result of vehicle accidents. Portions of cars, trucks, and motorcycles are present along the roadside, as well as residual trash including paper, plastic, cellophane wrappers, bottles, cigarette lighters, and aluminum cans.

2.6.2.1 Properties Identified within the APE

P-30-176758: Ortega Highway (Post Mile [PM] 13.33/16.6)

This 3.27-mile section of “Ortega Highway, State Route 74” runs from the east side of San Juan Canyon Bridge further east to the border of Orange and Riverside counties. This highway segment was evaluated by Caltrans in 2003 and previously determined not eligible for listing in the National Register as well as not eligible for registration as a CHL, with SHPO concurrence on February 19, 2004 (*Historic Resource Evaluation Report for State Route 74, 12-ORA-74 PM 13.6/6.6. EA 12-043200*, April 2003). As part of the current project, previous documentation was reviewed, confirming the previous conclusions.

Hot Springs Canyon Bridge: Bridge No. 55-0063

Hot Springs Canyon Bridge (Bridge No. 55-0063) is within the APE and is listed on the Caltrans Historic Bridge Inventory as Category 5: Previously determined not eligible for listing in the National Register.

Ortega Highway (PM 11.5/13.28)

This 1.78-mile section of “Ortega Highway, State Route 74” originates at the western limits of the proposed project near the terminus of an unmarked trail (approximately 0.8 mile west of the San Juan Fire Station) and runs east, up to but excluding the San Juan Canyon Bridge. This highway segment has not been previously evaluated and was evaluated as a part of this project. SHPO concurred on May 22, 2018, that SR-74 (Ortega Highway) is not eligible for inclusion in the National Register or designated as a California Historical Landmark.

P-30-1723: San Juan Hot Springs

The San Juan Hot Springs site contains geothermally warmed water that is located on the west side of Hot Spring Canyon just north of Ortega Highway. The site was used prehistorically by local natives and missionaries from Mission San Juan Capistrano in the 1700s (Mitchell et al. 2009). In 1841, the land was granted by Governor Pico to A. Olivera as part of Misión Vieja or La Paz (Beck and Haase 1974:37; Shumway 1993:59), becoming one of the many Mexican Period cattle ranches. In the 1920s, the springs were turned into a spa resort, which closed in 1939. In 1974, the land was acquired by Orange County Parks and named Ronald W. Caspers Wilderness Park after recently deceased Orange County Board Supervisor, Ronald W. Caspers. In 1980, the hot springs area was leased to Russell Kiessig, who operated the springs as a spa resort until 1990, when it was closed due to health concerns. The resort was dismantled by Kiessig, and later in the 1990s, the remaining structures were destroyed by a fire, leaving just foundations and ruins.

As mapped, using digital information provided by the SCCIC, the San Juan Hot Springs site is located within the APE. The digitized site boundary provided by the SCCIC was used to create the maps for this project. As shown on a 7.5-minute United States Geological Survey (USGS) map, the site is adjacent to the APE. The same boundaries were used to create the APE map, but the larger scale of the APE map reveals irregularities between the digitized site boundary and the site record description. The digitized site boundary is larger than it should be when compared with feature locations as described on the Mitchell et al. (2009) site form, which did not include a map showing the site boundaries. The Mitchell et al. (2009) site form

described the southern boundary of the site as Ortega Highway, whereas the APE map shows the boundaries appearing in the roadway at various points. As such, it is believed that the site boundary may have been digitally misplotted.

Native American consultation resulted in the NAHC identifying sites in the Sacred Lands File that are within the APE that may be affected by the project, although the NAHC did not identify a specific site name or location. However, the P-30-1723 site form (Mitchell et al. 2009:7) states that the NAHC lists the San Juan Hot Springs site as sacred. The Historic Property Survey Report conducted for the replacement of the original Hot Springs Creek Bridge (Webb and Romani 1982b:4) states: “The San Juan Hot Springs Sacred Lands area is listed on the California Native American Heritage Commission list of Sacred Lands.” Later, Webb and Romani (1982b:6) state: “...the San Juan Hot Springs area (boundaries unknown) is on the Native American Heritage Commission inventory of sacred lands and the Juaneño Band of Mission Indians regard the APEI as sensitive...”

The site is considered eligible for inclusion in the National Register and/or the CHL for the purposes of this project only under Caltrans’ Section 106 PA Stipulation VIII.C.4 given the large resource size and limited potential for effects.

P-30-528: Prehistoric Artifact Scatter

Located within the mapped area of the San Juan Hot Springs site (P-30-1723) is prehistoric artifact scatter CA-ORA-528 (Bell and Weaver 1976). The site was described as the remnant of a former campsite, and is said to contain both ground stone (one mano and one metate) and flaked stone (scraper and basalt flakes).

The site is considered eligible for inclusion in the National Register and/or the CHL for the purposes of this project only because it is located within the mapped area of P-30-1723 (San Juan Hot Springs) discussed above.

P-30-1631: Historic Trash Scatter

Site P-30-1631 was originally recorded as a scatter of historic trash located in a heavily vegetated area (Silva and Medin 2002). As recorded, the site contained metal food and beverage cans, broken glass and Fiesta Ware ceramics, soda bottles, and cut bone that appear from the original description to represent domestic household trash dating from ca. 1940s–1960s. Due to the scale of the USGS map, P-30-1631 appears to be within the APE on the USGS map, although on the APE map, the site is adjacent but outside of the roadway and the APE.

The site was previously determined ineligible for inclusion in the National Register and/or designation as a CHL, and SHPO concurred with this determination on February 19, 2004.

Based on the records searches, consultation/communication, and field survey described above, two archaeological sites (P-30-528: Prehistoric Artifact Scatter and P-30-1631: Historic Trash Scatter) and two built environment resources (P-30-176758: Ortega Highway and P-30-1723: San Juan Hot Springs [multi-component site]) have been recorded within the project APE. One State-owned bridge (Bridge No. 55-0063) is within the APE. This bridge is listed in the California Historical Significance State Agency Bridge List of October 2017 as a Category 5 Bridge and is not eligible for the National Register. Therefore, the bridge is not subject to evaluation per the Caltrans Section 106 PA, nor does it meet any criteria outlined in Section 15064.5(a) of the CEQA Guidelines.

2.6.3 Environmental Consequences

2.6.3.1 Temporary Impacts

Build Alternative (Preferred Alternative)

The construction of the Build Alternative could potentially result in impacts to previously undocumented cultural resources. Any such impacts during construction of the Build Alternative would be considered permanent (not temporary) impacts. As a result, potential impacts of the Build Alternative on cultural resources are discussed below in Section 2.5.3.2.

No Build Alternative

Under the No Build Alternative, none of the proposed improvements to SR-74 would be constructed. The No Build Alternative would maintain the existing conditions; therefore, the No Build Alternative would not result in temporary adverse impacts related to cultural resources as a result of construction activities.

2.6.3.2 Permanent Impacts

Build Alternative (Preferred Alternative)

Within the project APE, there are two assumed historic properties: (1) P-30-1723 (San Juan Hot Springs, a multicomponent site with prehistoric and historic components), and (2) P-30-528 (Prehistoric Artifact Scatter, within the limits of San Juan Hot Springs). Both sites are being considered eligible for inclusion in the National Register for the purpose of this project only in accordance with Caltrans' Section 106 PA Stipulation VIII.C.4, due to the large resource size and limited

potential for effects. Per the ESA Action Plan, both sites will be avoided and protected by using ESA fencing along the site's southern edge in order to delineate the site boundary. The ESA Action Plan also requires the establishment of an Archaeological Monitoring Area in the vicinity of the ESA fencing. A Finding of No Adverse Effect Without Standard Conditions – Environmentally Sensitive Area for the prehistoric and historic properties has been made for the project as a whole.

SHPO concurred with this determination in a letter dated May 22, 2018. This letter is included at the end of Chapter 4, Comments and Coordination. Overall, the project as a whole has no adverse effects on historic properties.

If cultural materials or human remains are discovered during construction, all earthmoving activity within and around the immediate discovery area will be diverted until a qualified archaeologist or the County Coroner can assess the nature of the find. Project Feature PF-CUL-1 addresses the possibility of discovery of cultural materials during construction.

PF-CUL-1 If cultural materials are discovered during site preparation, grading, or excavation, the construction contractor will divert all earthmoving activity within and around the immediate discovery area until a qualified archaeologist can assess the nature and significance of the find. At that time, coordination will take place with the California Department of Transportation (Caltrans) District 12 Environmental Branch Chief or the District 12 Native American Coordinator to determine the appropriate course of action.

Project Feature PF-CUL-2 addresses the possibility of discovery of human remains during construction.

PF-CUL-2 If human remains are discovered, California Health and Safety Code (H&SC) Section 7050.5 states that further disturbances and activities shall stop in any area or nearby area suspected to overlie remains, and the County Coroner contacted. If the remains are thought by the Coroner to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC), who, pursuant to California Public Resource Code (PRC) Section 5097.98, will then notify the Most Likely Descendant (MLD). At that time, the person who discovered the remains will contact the Caltrans District 12 Environmental Branch Chief or the District 12 Native American

Coordinator so that they may work with the MLD on the respectful treatment and disposition of the remains. Further provisions of PRC 5097.98 are to be followed as applicable.

Historic properties are protected under Section 4(f) of the U.S. Department of Transportation Act, which regulates the “use” of land from historic properties by transportation facilities. The proposed project includes a requirement for ESA fencing around two archaeological sites (P-30-1723 and P-30-528) prior to any project activities in the vicinity of those sites as discussed in Measure CR-1, below. The ESA fencing would prevent entry to those sites during the construction phase. As a result, these two archaeological sites that are being considered NRHP-eligible would be protected from any potential effects associated with the proposed project. These two sites would not experience any permanent, temporary, or constructive use under Section 4(f). Therefore, these resources would not trigger the requirements for protection under Section 4(f).

No Build Alternative

Under the No Build Alternative, none of the proposed improvements to SR-74 would be constructed. The No Build Alternative would maintain the existing conditions; therefore, the No Build Alternative would not result in temporary adverse impacts related to cultural resources as a result of construction activities.

2.6.4 Avoidance, Minimization, and/or Mitigation Measures

In addition to the project features outlined above, the following Mitigation Measure CR-1 would avoid and/or minimize potential project effects to cultural materials during construction of the Build Alternative.

CR-1 Environmentally Sensitive Area Action Plan. The Environmentally Sensitive Area (ESA) Action Plan will protect both sites by utilizing protective orange plastic fencing known as “snow fencing” in order to keep out construction personnel. A professional California Department of Transportation (Caltrans) Professionally Qualified Staff (PQS) qualified monitor (or similarly qualified archaeological consultant) along with a Native American observer will monitor all ground-disturbing activities in the vicinity of site P-30-1723, which will be established as an Archaeological Monitoring Area (AMA). The archaeological monitor will be responsible for noting ESA fencing integrity and immediately notify the Caltrans project archaeologist if

any construction impacts to the ESA fencing should occur. The ESA will remain in force throughout the duration of the project. When construction activities are complete, the Resident Engineer will inform the Caltrans project archaeologist that construction work has been completed. Refer to Table A (Tasks and Responsibilities) of the ESA Action Plan for the full list of tasks included to protect these sites.